PT 99-27
Tax Type: PROPERTY TAX
Issue: Governmental Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

CITY OF ROCKFORD, APPLICANT	**No: 98-PT-0021,**
	Real Estate Tax Exemption For 1995 Tax Year
	P.I.N.: 202D-070B
v.	**Winnebago County Parcels**
ILLINOIS DEPARTMENT OF REVENUE	**Robert C. Rymek Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Kathleen Elliot, Ronald Schultz, & Kerry Partridge on behalf of the City of Rockford.

SYNOPSIS: At issue is whether Winnebago County Parcel Index Number 202D-070B (hereinafter the "leasehold") should be exempt from 1995 real estate taxes under section 15-60 of the Property Tax Code which exempts taxing district property. 35 ILCS 200/15-60.

This controversy arose as follows:

The Rockford Metropolitan Exposition, Auditorium and Office Building Authority (hereinafter the "Authority") acquired ownership of Winnebago County Parcel Index Number 202D-070 from the City of Rockford (hereinafter the "City"), and leased the property back to the City. The Authority then applied for a property tax exemption.

On October 19, 1995, the Illinois Department of Revenue (hereinafter the "Department") granted the Authority a property tax exemption but noted that "A leasehold assessment should be made on this property see 35 ILCS 200/15-60 and 9-195."

The Authority's exempt freehold interest was assigned Parcel Index Number 202D-070A. The City's leasehold interest was assigned Parcel Index Number 202D-070B. The City then filed the instant Property Tax Exemption Complaint with the Winnebago County Board of Review seeking a property tax exemption for the leasehold for the 1995 tax year. On March 11, 1996, the Board recommended that the application for exemption be denied "as a leasehold should not be exempt." On May 30, 1997, the Department also denied the City's exemption request, concluding that the leasehold was not in exempt ownership and that the City was not the owner of the property.

The City filed a timely appeal from the Department's denial of exemption. On November 5, 1998, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence it is recommended that the leasehold should not be subject to 1995 real estate taxes.

FINDINGS OF FACT

1. Dept. Ex. No. 1 and Dept. Ex. No. 2 establish the Department's jurisdiction over this matter and its position that the subject leasehold interest was not in exempt ownership and that the City was not the owner of the property.

2. The subject property[1] is located on Main Street in Rockford, Illinois and is improved with a structure that is 93% municipal parking deck and 7% commercial space. The City built this structure. Dept. Gr. Ex. No. 1.

3. The Authority acquired the subject property via a quitclaim deed from the City on August 10, 1978. App. Ex. No. 1.

4. On October 20, 1978, the City acquired a leasehold interest in the subject property from the City under a series of leases. App. Ex. Nos. 2-5.

5. Both the Authority and the City are Municipal Corporations. App. Ex. No. 7; Tr. p. 7.

6. Pursuant to a development agreement dated November 2, 1992, the City agreed to build the municipal parking deck now located on the subject property. App. Ex. No. 6.

7. The City allows members of the public to use the parking deck for a $30 per month fee. Tr. pp. 11-12.

8. The City hopes to eventually sublease the commercial space to a commercial tenant, but did not do so in 1995. Dept. Gr. Ex. No. 1.

9. On October 15, 1995, the Department granted a property tax exemption for the applicant's freehold interest in the subject property. App. Ex. No. 8.

10. In granting the freehold exemption, the Department noted "A leasehold assessment should be made on this property see 35 ILCS 200/15-60 and 9-195." App. Ex. No. 8.

[1] The term "subject property" will be used when both the freehold and the leasehold

CONCLUSIONS OF LAW

An examination of the record establishes that the City has demonstrated by the presentation of testimony, exhibits, and argument, evidence sufficient to establish that the City's leasehold interest should not be subject to taxation for the 1995 tax year. Accordingly, under the reasoning given below, the determination by the Department should be reversed. In support thereof, I make the following conclusions:

Article IX, section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, article IX, section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority to exempt units of local government, the General Assembly enacted section 15-60 of the Property Tax Code

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interests are referred to jointly.

(hereinafter the "Code"). 35 ILCS 200/15-60. Section 15-60 provides a general exemption for the property of taxing districts and specifically exempts, *inter alia*, "all public buildings belonging to any county, township, city, or incorporated town, with the ground on which the buildings are erected" and "all property owned by any city or village located within its incorporated limits." *Id.*

The intent underlying section 15-60 is that government owned property not be taxed so that "the government not be forced into the inconsistency of taxing itself in order to raise money to pay over to itself[.]" United States v. Hynes, 20 F.3d 1437, 1442 (7th Cir. 1994), citing 12 Am. & English Encyclopedia at 368-69. Accordingly, it is readily apparent that had the City "owned," rather than leased, the subject property, the City would not be liable for property taxes under section 15-60. However, the City did not own the subject property and was instead simply granted a leasehold interest by the Authority. Under section 15-60, when taxing district property is leased, the freehold remains exempt, but "the leasehold interest of the lessee shall be assessed under Section 9-195 of this Act[.]" 35 ILCS 200/15-60.

Ordinarily, leasehold interests are not separately assessed. However, section 9-195 provides: "when property which is exempt from taxation is leased to another whose property *is not* exempt, and the leasing of which does not make the property taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee." 35 ILCS 200/9-195.

Simply stated, the two primary prerequisites to the separate assessment of a leasehold under Section 9-195 are: (1) a freehold which is exempt; and (2) a lessee whose property *is not* exempt. Here, the first prerequisite is met because it is undisputed that the

Authority's freehold is exempt. However, the second prerequisite is not met because property of the City would also clearly be exempt under section 15-60. 35 ILCS 200/15-60. Thus, section 9-195 does not apply and the leasehold should not have been separately assessed.

This conclusion is consistent with the general purpose of section 9-195, which is to allow for the taxation of otherwise exempt property only to the extent that it is leased out to non-exempt owners or for non-exempt uses. Section 9-195 was not meant to cover a situation, such as in the instant case, where property, which is exempt from taxation, is leased to another whose property is also exempt. See Northwest Suburban Fellowship v. Department of Revenue, 298 Ill. App. 3d 880, 885 n.2 (1998) (Section 9-195 is not applicable where lessee is an exempt organization.). To conclude otherwise would encourage the pointless practice of assessing leaseholds of entities whose property is already statutorily exempt. See, e.g. Children's Development Center v. Olsen, 54 Ill. 2d 332 (1972) (affirming circuit court's decree precluding the collection of taxes assessed against real estate owned by an exempt organization and leased to another exempt organization).

For purposes of clarity, I note that nothing in this recommendation should be construed to suggest that leaseholds on the subject property may *never* be separately assessed and subject to taxation under section 9-195. Clearly, section 9-195 could become applicable in the event the City accomplishes its proposed goal of subleasing 7% of the subject property for commercial usage. Under those circumstances, the subleases would appropriately be assessed separately under section 9-195 since the property of

such commercial subleasees would not be exempt.[2] See Nabisco Inc. v. Korzen, 68 Ill. 2d 451 (1977); Goodyear Tire & Rubber Co. v. Korzen, 411 Ill. 421 (1952).

Finally, although it is clear from the above discussion that the most appropriate relief in this matter would be for there to be no separate assessment of the leasehold, there remains some question as to whether the Department is authorized to grant such relief. See Northwest Suburban Fellowship *supra* at 883-84 n.1 (1998) (Noting that the Department generally lacks "any power, jurisdiction or authority to review, revise, correct or change any individual assessment" but not addressing the issue of whether the Department could change the taxpayer and parcel to be assessed.). In the event that the Department is deemed not to have authority over the assessment, then the applicant's leasehold interest should simply be granted an exemption for the 1995 tax year under section 15-60 of the tax code because the leasehold interest would be property of a taxing district.

[2] Although the City allows the public to use parking spaces for fees, this does not constitute a non-exempt sublease because the public users acquire no ownership interest in the property. Such parking-for-fee agreements are considered licenses, not leases, and therefore do not call section 9-195 into play. See In re Application of Rosewell, 69 Ill. App. 3d 996 (1st Dist. 1979).

WHEREFORE, for the reasons set forth above, I recommend that Winnebago County Parcel Index Number 202D-070B should not be subject to property taxation for the 1995 tax year.

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Date

Robert C. Rymek
Administrative Law Judge